IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2719 OF 2001

Manohar Tanaji Suryavanshi. ...Petitioner.

Versus

Brihan Mumbai Municipal Corporation. ...Respondent.

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Mr. N.M. Ganguli for the Petitioner.
Mr. V. P. Vaidya with Ms.Ritu Vora i/b. Cr.Bayley & Co. for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

February 7, 2005.

ORAL JUDGMENT:

The Petitioner was a conductor in the BEST Undertaking. A chargesheet was issued to him, on 30th January 1996, for misconduct under Standing Order 20(j) - "gross negligence" and Standing Order 20(c) - "theft, fraud or dishonesty in connection with the business of

the Undertaking". The charge of misconduct was that in the month of October 1995, a shortage of cash had been detected to the extent of Rs. 86.25, while in the month of November 1995 a similar shortage of Rs.91/- had been detected. A disciplinary enquiry was held, upon which the Petitioner came to be dismissed from service. The order of dismissal was challenged in proceedings under the Bombay Industrial Relations Act, 1946. The Labour Court held that the charge of misconduct was duly established; that the findings of the Enquiry Officer were not perverse and that the penalty of dismissal was not disproportionate. The Labour Court noted that the factum of shortage was admitted by the employee. This was not an isolated case of misconduct. The workman had been punished 11 times in the past and on five occasions, he had been subjected to a disciplinary penalty for similar acts of misconduct. On 24th April 1987, his salary was reduced by one step for six months; on 31st June 1988, by one step for two years; on 7th March 1990 by one step permanently; on 22nd March 1990 by one step for six months; and on 22nd August 1991 by two steps permanently. The Industrial Court on these findings

held that the charge of misconduct has been proved and having regard to the past record where the workman had been penalised on 11 previous occasions, the punishment of dismissal was not disproportionate.

2. Counsel appearing on behalf of the Petitioner urges that a shortage of the nature that is involved in the present case was not sufficient to establish a case of gross negligence, particularly since no charge of dishonesty in connection with the business of the Undertaking has been established. Reliance was sought to be placed on judgments of Learned Single Judges of this Court in **Mahindra and Mahindra Ltd. vs. G.V. Akerkar,** 1988 (57) F. L. R. 667 and **Vomayya Babu Shetty vs. Digvijay Spinning and Weaving Mills,** 1992 I LLJ 691. Reliance was also placed on a judgment of a Division Bench in **National Textile Corporation (South Maharashtra) Ltd. vs. Shramik Janata Union**, 1990 Mh.L. J. 1315.

3. The charge against the workman that has been held to be

established is of gross negligence under Standing Order 20(j). In his application before the Labour Court, the explanation of the Petitioner, who admitted the shortage, was as follows:

> "The shortages are due to faulty transactions with the passengers, The printing of Rs. 3.50 block. The entire amount is made good by the employee."

The factum of shortage was not disputed. When the matter was carried in appeal before the Industrial Court, the earlier explanation was sought to be changed in the Memo of appeal and it was alleged that the Petitioner was indisposed and that shortage was a usual phenomenon:

> "The Learned Labour Judge ought to have considered that the employee was sick and also made all the money good. The learned Judge ought to have considered that shortage is an usual phenomenon in the Traffic Industry."

4. Both the Courts below have been consistent in holding that the factum of misconduct has been duly proved. In fact, the shortage was admitted. The nature of the explanation was hardly believable and in any event both the Courts having rejected the explanation of

the employee, the exercise of the jurisdiction under Article 226 is not warranted. In the Written Statement that was filed by the Undertaking, the past service record of the workman was adverted to and it would be material to cull out an extract therefrom:

“-1.	24-11-1989	Censured.
-2.	11-12-1989	Censured.
-3.	28-10-1992	Censured.
-4.	16-12-1993	Reduction in Grade by one step for six months.
-5.	06-09-1994	Reduction in Grade by one step for one year.
-6.	14-9-1994	Entry in the service record regarding shortages.
-7.	16-09-1994	Entry in the service record regarding shortages.
-8.	21-11-1994	Entry in the service record regarding shortages.
-9.	05-01-1995	Entry in the service record regarding shortages.
-10.	17-01-1995	Entry in the service record regarding shortages.

-11.	16-06-1995	Reduction in Grade by one step permanently.”

5. On these facts the Labour Court and the Industrial Court in appeal, noted that the service record of the Petitioner showed a consistent course of misconduct involving shortages of cash for which he had been punished in the past.

6. In dealing with a case such as the present, it would be necessary to advert to the judgment of the Supreme Court in **Regional Manager UPSRTC, Etawah vs. Hoti Lal,** 2003 AIR SCW 80, in which the Court set aside the judgment of a Division Bench of the Allahabad High Court which had quashed an order of dismissal that was passed against a conductor of a State Transport Undertaking on account of a shortage of an amount of Rs.16/-. While restoring the judgment of the Single Judge of the High Court which had upheld the order of dis missal, the Supreme Court observed thus:

> “It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while

> considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned Single Judge upholding order of dismissal."

7. A Learned Single Judge of this Court, has, in a decision involving the BEST Undertaking, dealt with the submission that certain circulars of the Undertaking permit the Undertaking to condone a shortage upto a permissible limit. The Learned Single Judge in **Brihan Mumbai Municipal Corporation vs. The General Secretary, BEST Workers' Union**, 2001 I CLR 855 rejected the submission and held as follows :

> "We cannot show sympathy or mercy at the cost of the public. Merely because some shortage is permissible it cannot be taken as a privilege by every conductor that he can remit shortage upto the permissible limit. The delinquent conductor in the present case was remitting the cash in shortage shown as above on occasions which are

> as high as 21 in a month. This cannot be permitted by those who are dealing with public money in particular."

8. The decisions on which reliance was placed by the Petitioner are clearly distinguishable. In **Mahindra and Mahindra Ltd. vs. G. V. Akerkar,** 1988 (57) F. L. R. 667, the Labour Court had held that the penalty of dismissal that was imposed on an employee of ten years' standing for pilfering petrol worth Rs. 9.50 was harsh and disproportionate. The order of the Learned Single Judge was affirmed in appeal. The Division Bench was of the view that the Labour Court had exercised its judicial discretion and the Learned Single Judge having declined to interfere, there was no reason for interference in the Letters Patent Appeal. The decision in **Vomayya Babu Shetty vs. Digvijay Spinning and Weaving Mills**, 1992 I LLJ 691, was one in which when a workman was searched by a watchman on duty, he was found to be in possession of a half broken brass brush and four small pieces of brass in his back pocket. The Labour Court and the Industrial Court dismissed the application filed

by the workman. In a Writ Petition under Article 226, H.H. Kantharia, J. held, agreeing with the submission of the workman, that even assuming that the workman had committed a theft of property that was hardly of any value and he could not have been visited with an extreme penalty of dismissal from service. In my view, the proposition laid down in the judgment of H.H. Kantharia, J. cannot be regarded as holding the field or as reflecting the correct position in law in view of the principles which have been laid down by the Supreme Court in the **U.P. State Transport Corporation' s case** (supra). In so far as the judgment of a Division Bench in **National Textile Corporation** (supra) is concerned, that was a case where an employee was charged with selling six pieces of cloth at the rate of Rs.55/- per piece instead of Rs.62/-. The Division Bench noted that it was an accepted position that these pieces were not readily available for sale in the retail shop and had been produced from the godown and looking to the manner in which the approval slip was prepared, there was every possibility of a mistake having been committed in respect of the rate which was charged. There was no misconduct on

the part of the workman and there was only a total loss of Rs.42/- to the Mills. The judgment of the Division Bench, is therefore, based on a consideration of these facts and hence is distinguishable. In contrast, the past record of the workman here will show that he was habituated to such acts of misconduct in the past and that he was punished on 11 occasions. A conductor in a position of the Petitioner, who is an employee of the BEST Undertaking, which is a public body, holds money which he collects as fare from passengers in trust. A breach of duty on the part of a conductor in accounting for moneys under his custody and control cannot be condoned or ignored. Employees of public undertakings perform service in aid of a facility which is made available to the community. A breach of the fiduciary obligation which is imposed on an employee involves, besides revenue of the Undertaking, the interest of the community whose money the employee is duly liable to account, as the revenue of Undertaking. The approach of the Labour Court as well as the Industrial Court cannot be said to be erroneous. On the contrary, the approach is consistent with the law laid down by the Supreme Court

and commends itself for acceptance. There is, therefore, no merit in the Petition which is accordingly dismissed.

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